

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

LARRY WHITING, LEROY WHITING, &  
LORENZO GARCIA,

Plaintiffs,

vs.

No. CIV 11-0671 JB/GBW

DANA HOGAN;  
CLARK MOVING AND STORAGE, INC.;  
MAYFLOWER TRANSIT, LLC &  
THE HANOVER INSURANCE COMPANY,

Defendants.

**MEMORANDUM OPINION AND ORDER**

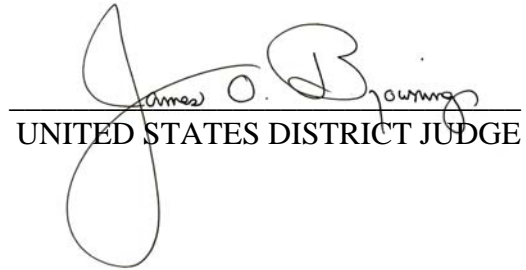
**THIS MATTER** comes before the Court on Plaintiff Larry Whiting's, Leroy Whiting's, & Lorenzo Garcia's Motion for a Jury Trial, filed September 2, 2011 (Doc. 14)("Motion"). The Court held a hearing on February 14, 2012. The primary issue is whether this matter should be tried by a jury. The Court will grant the Motion.

Plaintiffs Larry Whiting, Leroy Whiting, and Lorenzo Garcia request that the Court enter an order permitting them to try their case before a jury. See Motion at 2. The Plaintiffs assert that the issues are suitable for a jury to decide because they are fact-intensive claims related to a motor-vehicle accident. See Motion at 2. They argue that their Complaint for Personal Injuries ¶ 14, at 3 (dated June 24, 2011), filed July 29, 2011 (Doc. 1-1)("Complaint"), raises established tort claims and that they seek only money damages. See Motion at 3. They further assert that granting the Motion furthers the intent of the Federal Rules of Civil Procedure and the Seventh Amendment to the United States Constitution. See Motion at 6. No defendant filed a response. The Court held a hearing on February 14, 2012. At the hearing, the Defendants indicated that they did not oppose

the Motion or a jury trial. See Transcript of Hearing at 20:12-22 (February 14, 2012)(Court, Winters)(“Tr.”).<sup>1</sup>

Pursuant to local rule 7.1(b), the “failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion.” D.N.M.L.R.-Civ. 7.1(b). Accordingly, because the Defendants did not file a response to the Motion, they are deemed to have consented to it. The Defendants confirmed that they do not object to the Court granting the Motion at the hearing. See Tr. at 20:12-22 (Court, Winters). Because no party objects to a jury trial and because the tort claims alleged in the Complaint are suitable for a jury to decide, the Court will grant the Motion.

**IT IS ORDERED** that Plaintiff Larry Whiting’s, Leroy Whiting’s, & Lorenzo Garcia’s Motion for a Jury Trial, filed September 2, 2011 (Doc. 14), is granted.



UNITED STATES DISTRICT JUDGE

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<sup>1</sup>The Court’s citations to the transcript of the hearing refer to the court reporter’s original, unedited version. Any final transcript may contain slightly different page and/or line numbers.